IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Bail Appl..No. 7265 of 2007()

CRIME NO.304/07 OF THE KODUVALLY POLICE STATION

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PETITIONER/IST ACCUSED

KANARAN.N.K., S/O.RARUKUTTY, AGED 65
YEARS, NELLIKAMKANDY HOUSE, ELETTIL AMSOM
VALIYAPARAMBU DESOM, KOZHIKODE TALUK.

BY ADV. SRI.P.R.SREEJITH

RESPONDENTS: COMPLAINANT/STATE

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.No. 7265 OF 2007

Dated this the 12th day of December, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused. He along with the co-accused faces allegations for offences punishable, inter alia, under Secs.420 and 468 of the IPC. The crux of the allegations is that the accused persons, in collusion, fraudulently deceived the de facto complainant – a bank, to part with money. The crux of the allegations is that accused 1 and 2 entered into a fraudulent agreement to sell an item of property which the 1st accused had allegedly sold much earlier to the 3rd accused. They entered into such an agreement for sale and later executed the sale agreement with the transparent intention of defrauding the bank and to induce the bank to part with an amount of Rs.12,00,000/-. An agreement dated 16/3/06 and a sale deed dated 26/4/06 were

allegedly brought into existence fraudulently by accused 1 and 2 suppressing the fact of earlier sale of the same item of property to the 3rd accused as per an earlier document dated 3/1/06. The crime was registered on the basis of a complaint of the de facto complainant – the Manager of the Bank. The Manager of the bank raised allegations not only against accused 1 and 2 but also against the 3rd accused – a subsequent transferee, as also the 4th accused - the Registrar who registered the document and did allegedly issue an encumbrance certificate suppressing the earlier transaction. In the course of investigation, the Investigators appear to have been apprised of the forgery committed in respect of the encumbrance certificate allegedly issued by the 4th accused. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. According to the learned counsel for the petitioner, the petitioner had a larger extent of property from which he had effected the sales on 3/1/06, 26/4/06 and later on 11/6/07. It is his contention that there was no suppression of any earlier transactions when the agreement dated 16/3/06 and the sale deed dated 26/4/06 were entered into.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that as per the purchase certificate issued to the petitioner, he had only rights over 37 cents of land which entirely had been disposed of in favour of the 3rd accused by the sale deed dated 3/1/06. There is no merit whatsoever in the contention that after the document dated 3/1/06, the petitioner was left with any property to be assigned in favour of the 2nd accused or as per the sale deed dated 11/6/07. The learned Public Prosecutor, in these circumstances, prays that anticipatory bail may not be granted to the petitioner and the petitioner may be directed to resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate and then seek regular bail in the usual course. The petitioner has many questions to answer and the custodial interrogation of the petitioner is absolutely essential for a proper investigation of the crime, submits the learned Public Prosecutor.

4. I have considered all the relevant inputs. In view of the nature of the contentions, I have perused the Case Diary. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I take note of the submission of the learned Public Prosecutor in particular that

there is only one house admittedly in the property and that the said house is shown to be included maliciously in all the three sale deeds. I shall, at this early stage, not embark on any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I am unable to perceive any features in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Sec.438 of the Cr.P.C. The petitioner must appear before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. to Judge